

# Decision Notice



Decision 145/2010 Mr Steven Boxell and the City of Edinburgh Council

Details of statutory notices

Reference No: 200901176

Decision Date: 20 August 2010

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**Kevin Dunion**

Scottish Information Commissioner

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## Summary

Mr Boxell requested from the City of Edinburgh Council (the Council) information concerning the status of a specific address and concerning statutory notices served in relation to four named streets. The Council responded by withholding certain information as personal data and stating that the remainder was available on-line on its website. Following a review, Mr Boxell remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, in the course of which the Council provided certain information to Mr Boxell, the Commissioner found that the Council had been entitled to withhold the remaining information from Mr Boxell on the basis that it was either easily accessible on its website or on the basis that it was personal data, the disclosure of which would breach the first data protection principle.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) (Effect of exemptions) and 39(2) (Health, safety and the environment)

Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (Interpretation – definition of “environmental information”); 5(1) and (2)(b) (Duty to make environmental information available on request); 6(1)(b) (Form and format of information); 10(3) (Exceptions from duty to make environmental information available) and 11(2), (3)(a)(i) and (b) (Personal data)

Data Protection Act 1998 (the DPA) section 1(1) (Basic interpretative provisions – definition of “personal data”); Schedule 1 (The data protection principles – Part I: The principles (the first data protection principle)) and Schedule 2 (Conditions relevant for purposes of the first principle: processing of any personal data – conditions 1 and 6)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

## Background

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1. On 23 April 2009, Mr Boxell wrote to the Council requesting the following information:
  - i) *Details of any notes, meeting notes, Minutes and/or discussions concerning the status of 22 Dundonald Street (including as such relate to the physical structure of the building, its*



*outside appearance, repair works being/to be undertaken and whether council tax is paid in respect of this property); and*

*ii) Details of any statutory notices (including amounts) served in Dundonald Street, Drummond Place, Scotland Street and Royal Crescent (all EH3) in the last 5 years for works to repair the roofs of these properties (including works to the chimneys and works to re-slate the roofs), redacting personal data where appropriate.*

2. The Council responded on 14 May 2009, having in the interim clarified that Mr Boxell was not the owner of a property at 22 Dundonald Street. In relation to request i) the Council indicated that since Mr Boxell was not and never had been an owner of the property, the information could not be provided as it was data protected to the owners. In relation to request ii) the Council stated that the information requested was available on its website and provided a link.
3. On 17 May 2009, Mr Boxell wrote to the Council requesting a review of its decision. In particular, Mr Boxell drew to the Council's attention that its response made no reference to either the provision of FOISA under which the information was being withheld or the data protection principle the Council considered would be breached by disclosure. In relation to request ii), Mr Boxell disputed that the information requested was fully available online and requested it in tabular form, stating that if any administrative burden prevented the provision of information going back five years, then he would be content with information for the previous two years.
4. The Council notified Mr Boxell of the outcome of its review on 16 June 2009. In relation to request i), the Council stated that it considered the information sought to be exempt in terms of regulations 10(5)(e) and (f) of the EIRs. It also considered information as to whether Council Tax was paid on the property to be exempt under section 38(1)(b) of FOISA. In relation to request ii), the Council advised that there were a total of 473 properties within the streets listed in the request and that it considered the provision of a hyper-link to access the information to be an efficient way providing that access without charge. Given the availability of the information and the number of properties, it was the Council's view that Mr Boxell's request for the information in tabular form was manifestly unreasonable and therefore the information was exempt in terms of regulation 10(4)(b) of the EIRs.
5. On 22 June 2009, Mr Boxell wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to certain specified modifications.
6. The application was validated by establishing that Mr Boxell had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.



## Investigation

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7. On 24 July 2009, the Council was notified in writing that an application had been received from Mr Boxell and was asked to provide the Commissioner with certain information. The Council responded accordingly and the case was then allocated to an investigating officer.
8. The investigating officer subsequently contacted the Council, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to clarify its position on the application of the EIRs and to justify its reliance on any provisions of FOISA or the EIRs it considered applicable to the information requested.
9. The Council confirmed (with reasons) that it considered the information requested to be environmental information and therefore subject to the EIRs. Accordingly, it confirmed that it considered the information to be exempt under section 39(2) of FOISA. It also explained why it considered the information covered by request ii) to be easily available to Mr Boxell and therefore subject to regulation 6(1)(b) of the EIRs. As it was so available, the Council argued, it would be manifestly unreasonable to expect the Council to search for it and therefore regulation 10(4)(b) of FOISA applied.
10. In the course of the investigation, the Council provided Mr Boxell with the information it held which fell within the scope of request i), subject to the redaction of what it considered to be personal data. Mr Boxell confirmed receipt of this information and expressed his satisfaction with the redactions made. Request i) will therefore not be covered further in this decision.
11. In relation to request ii), the investigating officer checked what was available on the Council website and found that a search could be carried out for “notices issued” either under a specific address or by full postcode. Sample searches of postcodes confirmed that the details requested by Mr Boxell, with the exception of amounts, were published on the website. This was brought to the attention of the Council, which confirmed that the amounts were withheld under regulation 11(2) of the EIRs (as the personal data of the individual proprietors, who did not all consent to disclosure). It also submitted that some of this information was incomplete and therefore withheld under regulation 10(4)(d). The Council accepted, however, that it no longer considered request ii) to be manifestly unreasonable under regulation 10(4)(b) of the EIRs.
12. The arguments presented by both the Council and Mr Boxell, insofar as relevant, will be considered further in the Commissioner’s analysis and findings below.



## Commissioner's analysis and findings

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13. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to him by both Mr Boxell and the Council and is satisfied that no matter of relevance has been overlooked.

### FOISA or EIRs?

14. It is clear from the Council's correspondence with both Mr Boxell and the Commissioner that it dealt with request ii) on the basis that the information requested was environmental information, as defined in regulation 2(1) of the EIRs. The information in question concerns the physical condition of buildings and consequent repair works. Environmental factors, such as air, atmosphere and water, will have contributed substantially to the need for these repairs. In the circumstances, therefore, the Commissioner is satisfied that it falls within the definition of environmental information set out in regulation 2(1), in particular part (f) of that definition insofar as it relates to built structures.

### Section 39(2) of FOISA – environmental information

15. The exemption in section 39(2) of FOISA provides that environmental information as defined by regulation 2(1) of the EIRs is exempt from disclosure under FOISA, thereby allowing any such information to be considered solely in terms of the EIRs. In this case, the Commissioner accepts that the Ministers were entitled to apply the exemption to the withheld information, given his conclusion that this is environmental information.
16. As there is a separate statutory right of access to environmental information available to the applicant in this case, the Commissioner also accepts that the public interest in maintaining this exemption and in dealing with the request in line with the requirements of the EIRs outweighs any public interest in disclosure of the information under FOISA. The Commissioner has therefore proceeded to consider this case in what follows solely in terms of the EIRs.

### Regulation 6(1)(b) of the EIRs – form and format of information

17. The Council relied upon the provisions of regulation 6(1)(b) of the EIRs which states that a Scottish public authority shall comply with a request that environmental information be made available in a particular form or format, unless the information is already publicly available and easily accessible to the applicant in another form or format. This is a two-part test, which must (for the regulation to apply) conclude that the information is both publicly available and easily accessible.



18. The Commissioner is satisfied that the information requested, with the exception of amounts, is already publicly available in another format to that request by Mr Boxell, in that the details are published on the Council website. Having considered the time taken by the investigating officer to carry out sample searches, he is also satisfied that whilst (given the number of properties involved) it may take some time to complete the necessary searches, the information is easily accessible and therefore regulation 6(1)(b) applies.
19. The information relating to the amounts is not, however, publicly available and in this regard the Commissioner cannot Council's application of regulation 6(1)(b). The Council accepted this in the course of the investigation, while maintaining that this information was the personal data of the owners of the properties and that, on the basis that disclosure would breach the data protection principles, was exempted information in terms of regulation 11(2) of the EIRs. In addition, the Council submitted that statutory notices in relation to two sets of works at 22 Dundonald Street had been conjoined and the final costs were not yet known: on the basis that this particular information was incomplete, the Council also claimed the exception under regulation 10(4)(d) of the EIRs.
20. The Commissioner will first of all consider the exception under regulation 11(2) of the EIRs.

#### **Regulation 11(2) of the EIRs – personal data**

21. The Council submitted that the information relative to amounts of money associated with the statutory notices served on the owners of the properties in question was the personal data of those owners and that, in the absence of the consent of those owners, disclosure would breach the first, second, fourth and sixth data protection principles. The information was therefore withheld under regulation 11(2) of FOISA.
22. Regulation 10(3) of the EIRs requires that any personal data included in environmental information shall not be made available otherwise than in accordance with regulation 11. Regulation 11(2) prohibits disclosure of personal data of which the applicant is not the data subject, where either "the first condition" (set out in regulation 11(3)) or "the second condition" (set out in regulation 11(4)) applies to the information.
23. As the Council's arguments relate to "the first condition" and, in particular, the parts of the first condition which deal with disclosure which would contravene the data protection principles (regulation 11(3)(a)(i) or, where appropriate, regulation 11(3)(b)), this is what the Commissioner will focus on in this decision.
24. In order for a public authority to rely on the relevant part of this exception, it must show firstly that the information which has been requested is personal data for the purposes of the DPA and secondly that disclosure of the information would contravene at least one of the data protection principles laid down in Schedule 2 to the DPA.

#### *Is the information under consideration personal data?*

25. Personal data is defined in section 1(1) of the DPA, which is reproduced in the Appendix to this decision.



26. The Council submitted that the information withheld under this exception, namely the amounts to be paid by individual owners of the properties in question, was the personal data of those owners. The Commissioner accepts that the details of the owners of the properties would be publicly available elsewhere (for example, in the Register of Sasines or the Land Register) and therefore that the information as to the cost associated with each affected property can be linked to (and consequently relates to) an identifiable individual. In the circumstances, he is satisfied that it constitutes personal data as defined by section 1(1) of the DPA.

*Would disclosure of the information breach the first data protection principle?*

27. The first data protection principle states that the processing of personal data (here, processing being the disclosure of the data in response to a request made under the EIRs) must be fair and lawful and, in particular, that personal data shall not be processed unless at least one of the conditions in Schedule 2 (to the DPA) is met and, in the case of sensitive personal data, at least one of the conditions in Schedule 3 to the DPA is also met.
28. The Commissioner has considered the definition of sensitive personal data set out in section 2 of the DPA and is satisfied that none of the data under consideration here are sensitive personal data.
29. There are three separate aspects to the first data protection principle: (i) fairness, (ii) lawfulness and (iii) the conditions in the schedules. However, these three aspects are interlinked. For example, if there is a specific condition which permits the personal data to be disclosed, it is likely that the disclosure will also be fair and lawful.
30. The Commissioner will now go on to consider whether there are any conditions in Schedule 2 to the DPA which would permit the personal data to be disclosed. If any of these conditions can be met, he must then consider whether the disclosure of this personal data would be otherwise fair and lawful.

*Can any of the conditions in Schedule 2 of the DPA be met?*

31. The Commissioner has considered the conditions listed in Schedule 2 of the DPA and concluded that (subject to the question of consent in condition 1 of Schedule 2 – see below) only condition 6 might be considered to apply in this case. Condition 6 allows personal data to be processed if the processing is necessary for the purposes of legitimate interests pursued by the data controller or the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.
32. There are, therefore, a number of different tests which must be satisfied before condition 6 can be met. These are:
- Does Mr Boxell have a legitimate interest in obtaining this personal data?



- If yes, is the disclosure necessary to achieve these legitimate interests? In other words, is the disclosure proportionate as a means and fairly balanced as to ends, or could these legitimate interests be achieved by means which interfere less with the privacy of the data subjects (in this case, the owners of the properties)?
- Even if the processing is necessary for the legitimate purposes of Mr Boxell, would the disclosure nevertheless cause unwarranted prejudice to the rights and freedoms or legitimate interests of the data subjects? This will involve a balancing exercise between the legitimate interests of Mr Boxell and those of the data subjects. Only if (or to the extent that) the legitimate interests of Mr Boxell outweigh those of the data subjects can the personal data be disclosed.

*Does the applicant have a legitimate interest?*

33. In correspondence with the Commissioner, Mr Boxell explained that he had an interest in the requested information as a potential buyer of property in one of the streets mentioned in his initial request. In correspondence with the Council, he also argued that it was in the public interest for the details to be disclosed, referring to the status of the area as a World Heritage Site and the condition of the property.
34. The Commissioner is satisfied in the circumstances of this case that Mr Boxell has a legitimate interest in being able to assess the costs associated with the repairs to the premises in question.

*Is disclosure of the information necessary to achieve those legitimate interests?*

35. Having accepted Mr Boxell's legitimate interest in receiving the amounts associated with the notices, the Commissioner must now consider whether disclosure is necessary for those legitimate interests. In the circumstances, the Commissioner is satisfied that disclosure is proportionate and that Mr Boxell's aims could not be achieved by any other means which would interfere less with the privacy of the individuals in question.

*Would disclosure cause unwarranted prejudice to the legitimate interests of the data subjects?*

36. The Commissioner must now consider whether disclosure would nevertheless cause unwarranted prejudice to the rights, freedoms or legitimate interests of the property owners. As noted above, this involves a balancing exercise between the legitimate interests of Mr Boxell and those of the individuals in question. Only if the legitimate interests of Mr Boxell outweigh those of the individuals in question can the information be disclosed without breaching the first data protection principle. In this connection, it should be borne in mind that in the case of regulation 11 there is no presumption in favour of disclosure.
37. The Commissioner's briefing on Personal Information<sup>1</sup> sets out factors which should be taken into account in carrying out this balancing exercise. These include:

<sup>1</sup> <http://www.itspublicknowledge.info/nmsruntime/saveasdialog.asp?IID=3085&SID=133>





- (a) whether the information relates to the individual's public life (i.e. their work as a public official or employee) or their private life (i.e. their home, family, social life or finances)
  - (b) the potential harm or distress that may be caused by the disclosure
  - (c) whether the individual has objected to the disclosure
  - (d) the reasonable expectations of the individuals as to whether the information would be disclosed
38. The Commissioner is satisfied that the amounts payable under the statutory notices relate to the private lives of the owners. The Council argued that the data subjects would not have been expected this personal data to be released into the public domain. An individual identified as having a share of the ownership of a property against which a statutory notice had been served could, the Council argued, have their financial standing affected. Disclosure of such a fact could, it submitted, also cause them added stress or distress.
39. During the investigation, the Council wrote to each of the data subjects and, whilst some indicated that they had no objection to the release of the information, certain individuals did register their objection. Given that the costs associated with the notices are shared equally amongst the owners of the properties affected, the release of data pertaining to an individual who had no objection might also lead to the identification of data pertaining to an individual who did register an objection.
40. Analysis of the shared costs, together with the objections received by the Council to the release of the withheld personal data, showed that in relation to two of the five statutory notices for which costings were held, none of the data subjects affected had any objections to the release of the data. The relevant information from these notices was released to Mr Boxell and the Commissioner does not find it necessary to consider that information further.
41. The Commissioner accepts that an individual who owns a property where mutual repairs are carried out resulting in a financial obligation would have no reasonable expectation that details of the resulting personal financial obligations would be disclosed. The Commissioner must also bear in mind that the EIRs contain no presumption in favour of the disclosure of personal data.
42. In relation to the three statutory notices which attracted objection to the release of the data from the data subjects, therefore, the Commissioner has concluded on balance that disclosure of the withheld personal data would be unwarranted in this case by reason of prejudice to rights and freedoms or legitimate interests of the data subjects. Consequently, condition 6 in Schedule 2 to the DPA is not met. In the absence of a Schedule 2 condition (the Commissioner is satisfied that condition 1 does not apply and, indeed, that no other condition in Schedule 2 applies), disclosure would not be lawful. The Commissioner therefore concludes that disclosure would breach the first data protection principle and that the Council was entitled to withhold the personal data described above in accordance with regulation 11(2) of the EIRs. In relation to these notices, the Commissioner does not consider it necessary to consider whether disclosure of the withheld information would breach any other data protection principle or whether the exception under regulation 10(4)(d) of the EIRs would apply.



43. The Commissioner has noted Mr Boxell's submissions on the possibility of the data being provided in anonymised form. He acknowledges that, following the reasoning of the House of Lords in the case of *Common Services Agency v Scottish Information Commissioner [2008] UKHL 47*, in this case the Council should have considered whether the withheld personal data could have been fully anonymised so that it no longer constituted personal data. In this connection, he has also noted Mr Boxell's suggestion that an average cost could be provided for each street.
44. The ruling of the House of Lords on the above case led to the Commissioner reconsidering *Decision 021/2005 Mr Michael Collie and the Common Services Agency for the Scottish Health Service* and issuing a new decision under the same number. At paragraph 38 of that decision, the Commissioner notes the comments of Lord Rodger in relation to personal data:
- "... even if the information does constitute "personal data", the [CSA] will still be obliged to supply it, if that can be done without contravening the data protection principles in Schedule 1 to the [DPA]. And, if supplying the information in one form would contravene those principles, in my opinion, section 1(1) of [FOISA] obliged [the CSA] to consider whether it could comply with its duty by giving the information in another form ..."*
- The principles will not, of course, be breached if the information is fully anonymised and therefore ceases to be personal data as defined in section 1(1) of the DPA.
45. Mr Boxell argued that the Council had failed to take any steps to consider or discuss whether the data could be provided in another form or format, and also appeared to have disregarded the presumption in favour of disclosure at the heart of FOISA. While he suggested that consideration of alternative forms and formats was an aspect of the authority's duty to provide advice and assistance, it is clear from the above decision of the House of Lords that it is in fact an aspect of the authority's general duty to provide information or (as the case may be) make environmental information available.
46. On the presumption in favour of disclosure, the Commissioner must be guided by the reasoning in the above House of Lords decision, in which Lord Hope's comments underpin the general way in which the exemption in section 38(1)(b) of FOISA must be interpreted:
- "... there is no presumption in favour of the release of personal data under the general obligation that FOISA lays down. The references which [FOISA] makes to provisions of [the DPA] must be understood in the light of the legislative purpose of [the DPA], which was to implement Council Directive 95/46/EC. The guiding principle is the protection of the fundamental rights and freedoms of persons, and in particular their right to privacy with respect to the processing of personal data ..."*



47. Whilst the House of Lords considered section 38(1)(b) of FOISA, the Commissioner is also satisfied that the same reasoning applies in relation to regulation 11(2) of the EIRs. He notes in this connection that while regulation 10(2)(b) of the EIRs contains a specific statutory presumption in favour of disclosure, this applies only when considering the exceptions in paragraphs (4) and (5) of that regulation. It follows from the general reasoning of the House of Lords, and from the fact that the specific presumption in the EIRs does not extend to the application of regulation 11, that there is no presumption in favour of the disclosure of personal data under the general obligation laid down by the EIRs.
48. In considering whether the data could be sufficiently anonymised so that it no longer became personal data, Mr Boxell suggested that aggregating the total works per street (not tenement) and dividing this by the number of contributions in the street, giving the average cost of works on roofs and chimneys per street. As the repairs/cost per tenement would vary, he argued, it would not be possible to work out the amount of contribution per individual flat per tenement.
49. The anonymisation of data was considered fully at paragraph 45 of *Decision 021/2005*, where (guided by Lord Hope's comments in the above House of Lords decision) the Commissioner recognised the relevance of the original data held by the public authority: each must have a contribution to make to identification, and if living individuals cannot be identified from the anonymised data and the original data can provide no assistance in this task (read with the data in their anonymised form), then the anonymised data will no longer be personal data.
50. The Council advised that the details of statutory notices, including the addresses to which every notice applied, were published on its website. The names of current and previous home owners, it pointed out, were contained in public records available from the Register of Sasines. It therefore followed, the Council submitted, that a link existed between the name of a home owner, the address owned and any statutory notice served on that address. It did not believe that statistical manipulation of the information in question would remove the link with each of the specific owners, and consequently argued that this would not result in the information being anonymised to the extent that it would cease to be personal data.
51. Having considered the submissions received from both the Council and Mr Boxell, however, the Commissioner has concluded (given the information already in the public domain or otherwise accessible to Mr Boxell and the relatively small numbers of properties involved) that the requested information in any aggregated or averaged form could still be linked to identifiable individuals.
52. The Commissioner is satisfied, as indicated above, that the Council correctly withheld the information in question in terms of regulation 11(2) of the EIRs, as its disclosure would breach the first data protection principle. He is also satisfied that the information could not be anonymised to such a degree that release would not breach the first data protection principle.
53. In this case, the Commissioner also wishes to record his concern at the time taken by the Council to respond to the investigating officer at a number of points during the investigation, and at the quality of the submissions received from the Council. These issues will be taken up with the Council as part of the forthcoming assessment of its practice under section 43(3) of FOISA.



## **DECISION**

The Commissioner finds that City of Edinburgh Council was entitled, under Part 1 of the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004, to withhold the remaining information from Mr Boxell on the basis that it was either easily accessible on its website or on the basis that it was personal data, the disclosure of which would breach the first data protection principle.

## **Appeal**

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Should either Mr Boxell or the City of Edinburgh Council wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision notice.

**Margaret Keyse**  
**Head of Enforcement**  
**20 August 2010**



## Appendix

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### Relevant statutory provisions

#### Freedom of Information (Scotland) Act 2002

##### 1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

##### 2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

...

- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

...

##### 39 Health, safety and the environment

...

- (2) Information is exempt information if a Scottish public authority-
- (a) is obliged by regulations under section 62 to make it available to the public in accordance with the regulations; or
- (b) would be so obliged but for any exemption contained in the regulations.

...



## The Environmental Information (Scotland) Regulations 2004

### 2 Interpretation

(1) In these Regulations –

...

"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on

-

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in paragraph (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;
- (e) costs benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (c); and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c);

...

### 5 Duty to make available environmental information on request

(1) Subject to paragraph (2), a Scottish public authority that holds environmental information shall make it available when requested to do so by any applicant.



(2) The duty under paragraph (1)-

...

(b) is subject to regulations 6 to 12.

## 6 Form and format of information

(1) Where an applicant requests that environmental information be made available in a particular form or format, a Scottish public authority shall comply with that request unless-

...

(b) the information is already publicly available and easily accessible to the applicant in another form or format.

...

## 10 Exceptions from duty to make environmental information available-

...

(3) Where the environmental information requested includes personal data, the authority shall not make those personal data available otherwise than in accordance with regulation 11.

...

## 11 Personal data

...

(2) To the extent that environmental information requested includes personal data of which the applicant is not the data subject and in relation to which either the first or second condition set out in paragraphs (3) and (4) is satisfied, a Scottish public authority shall not make the personal data available.

(3) The first condition is-

(a) in a case where the information falls within paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998<sup>[6]</sup> that making the information available otherwise than under these Regulations would contravene-

(i) any of the data protection principles; or

...



- (b) in any other case, that making the information available otherwise than under these Regulations would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

...

## Data Protection Act 1998

### 1 Basic interpretative provisions

In this Act, unless the context otherwise requires –

...

“personal data” means data which relate to a living individual who can be identified –

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

...

## Schedule 1 – The data protection principles

### Part I – The principles

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –
  - (a) at least one of the conditions in Schedule 2 is met, and
  - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

...





**Schedule 2 – Conditions relevant for purposes of the first principle: processing of any personal data**

1. The data subject has given his consent to the processing.

...

6. (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

...